

---

---

## A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS FOR SOCIAL  
SERVICES PROGRAMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 346-17, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By amending subsection (f) to read:

4           "(f) As a condition for a certificate of approval, any  
5 organization, institution, or foster boarding home, including  
6 all adults residing in the foster boarding home, shall:

7           (1) Meet all standards and requirements established by the  
8 department;

9           (2) Be subject to criminal history record checks in  
10 accordance with section 846-2.7, and child abuse and  
11 neglect registry checks, in accordance with  
12 departmental procedures; and

13           (3) Provide consent to the department or its designee to  
14 obtain criminal history record and child abuse and  
15 neglect registry information.

16 New employees of the organization, institution, or home shall be  
17 fingerprinted within five working days of employment."



1           2.    By amending subsection (j) to read:

2           "(j)   The department or its designee shall request:

3           (1)   A criminal history record check through the Hawaii  
4           criminal justice data center, a consumer credit  
5           reporting agency, or a consumer reporting agency on  
6           all operators, employees, and new employees of child  
7           care institutions, child placing organizations, and  
8           foster boarding homes, including all adults residing  
9           in the foster boarding homes, subject to licensure  
10          pursuant to section 846-2.7; and

11          (2)   A child abuse and neglect registry check on all  
12          operators, employees, and new employees of child care  
13          institutions, child placing organizations, and adults  
14          residing in a foster boarding home subject to  
15          licensure in accordance with departmental procedures."

16          3.    By amending subsection (l) to read:

17          "(l)   The department or its designee shall make a name  
18          inquiry into the criminal history records for the first two  
19          years of certification of a foster boarding home and annually or  
20          biennially thereafter and into the child abuse and neglect  
21          registry in accordance with departmental procedures depending on  
22          the certification status of the home."



1 SECTION 2. Section 346-19.7, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The department shall develop procedures for obtaining  
4 verifiable information regarding the criminal history and child  
5 abuse and neglect registry information of persons who are  
6 seeking to become adoptive parents. [~~These procedures~~] The  
7 department or its designee shall [include] obtain criminal  
8 history record [checks] information through the Hawaii criminal  
9 justice data center, a consumer credit reporting agency, or a  
10 consumer reporting agency in accordance with section 846-2.7[-],  
11 and child abuse record information from the department in  
12 accordance with departmental procedures."

13 SECTION 3. Section 346-97, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) The department shall adopt rules pursuant to chapter  
16 91 establishing standards regarding the reputable and  
17 responsible character of service providers who have direct  
18 contact with individuals receiving services under this part,  
19 including:

20 (1) Licensed adult day care center operators, employees,  
21 new employees, subcontracted service providers and  
22 their employees, and adult volunteers;



- 1 (2) Purchase of service contracted and subcontracted  
2 service providers and their employees serving clients  
3 of the adult and community care services branch;
- 4 (3) Foster grandparent program, retired and senior  
5 volunteer program, senior companion program, and  
6 respite companion program participants; and
- 7 (4) Contracted and subcontracted service providers and  
8 their employees and new employees who provide home and  
9 community-based services under Section 1915(c) of the  
10 Social Security Act (42 [~~U.S.C. §~~] United States Code  
11 Section 1396n(c)) [~~-~~] or under any other applicable  
12 section or sections of the Social Security Act for the  
13 purposes of providing home and community-based  
14 services."

15 SECTION 4. Section 346-154, Hawaii Revised Statutes, is  
16 amended by amending subsections (c) and (d) to read as follows:

- 17 "(c) A provider shall:
- 18 (1) Be subject to criminal history record checks in  
19 accordance with section 846-2.7;
- 20 (2) Submit to the department a statement signed by any  
21 employee hired after the initial licensure or  
22 registration that requires the employee to indicate



1 under penalty of law, whether the employee has ever  
2 been confirmed to have abused or neglected a child,  
3 including threatened harm; and

4 (3) Provide consent to the department or its designee to  
5 conduct a criminal history record check in accordance  
6 with section 846-2.7 and a child abuse record check,  
7 and to obtain criminal history and child abuse record  
8 information for verification.

9 (d) The department or its designee shall obtain criminal  
10 history record information through the Hawaii criminal justice  
11 data center, a consumer credit reporting agency, or a consumer  
12 reporting agency in accordance with section 846-2.7, and child  
13 abuse record information from the department in accordance with  
14 departmental procedures on the applicant and any prospective  
15 employee of the applicant, including any new employee retained  
16 after the applicant is issued a registration or license under  
17 this part, which shall include an annual name inquiry into the  
18 state criminal history record files."

19 SECTION 5. Section 346-335, Hawaii Revised Statutes, is  
20 amended by amending subsections (a), (b), (c), and (d) to read  
21 as follows:



1           (a) The department shall develop standards to ensure the  
2 reputable and responsible character of operators [~~and~~],  
3 employees, volunteers, and other adults regularly present,  
4 except for adults in care, of the [~~home and community based case~~  
5 ~~management agencies and operators and other adults, except for~~  
6 ~~adults in care, residing in community care foster family homes~~  
7 ~~as defined in this chapter.~~] programs identified in section 346-  
8 97.

9           (b) An applicant for [~~a home and community based case~~  
10 ~~management agency license and operators, employees, and new~~  
11 ~~employees of a home and community based case management agency]~~  
12 the programs identified in section 346-97 shall:

- 13           (1) Be subject to criminal history record checks in  
14 accordance with section 846-2.7;
- 15           (2) Be subject to adult abuse perpetrator checks, if the  
16 individual has direct contact with a client. For the  
17 purposes of this section, "adult abuse perpetrator  
18 check" means a search to determine whether an  
19 individual is known to the department as a perpetrator  
20 of abuse as defined in section 346-222, by means of a  
21 search of the individual's name and birth date in the  
22 department's adult protective service file; and



1 (3) Provide consent to the department to conduct an adult  
2 abuse perpetrator check and to obtain other criminal  
3 history record information for verification.

4 (c) New employees of the [~~home and community based case~~  
5 ~~management agency~~] programs identified in section 346-97 shall  
6 be fingerprinted within five working days of employment, for the  
7 purpose of complying with the criminal history record check  
8 requirement.

9 (d) The department or its designee shall obtain criminal  
10 history record information through the Hawaii criminal justice  
11 data center, a consumer credit reporting agency, or a consumer  
12 reporting agency in accordance with section 846-2.7 on  
13 applicants for [~~home and community based case management agency~~  
14 ~~licenses, and operators, employees, and new employees of home~~  
15 ~~and community based case management agencies.~~] programs  
16 identified in section 346-97. The Hawaii criminal justice data  
17 center may assess the applicants and operators, employees, and  
18 new employees a reasonable fee for each criminal history record  
19 check conducted. The information obtained shall be used  
20 exclusively for the stated purposes for which it was obtained  
21 and shall be subject to federal laws and regulations as may be  
22 now or hereafter adopted."



1 SECTION 6. Section 352D-4.3, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) Employees, prospective employees, and volunteers of  
4 contracted providers or subcontractors in positions that place  
5 them in close proximity to youth when providing services on  
6 behalf of the office shall be required to agree to criminal  
7 history record checks[+] conducted by the office or its designee  
8 in accordance with section 846-2.7. The office shall develop  
9 procedures for obtaining verifiable information regarding the  
10 criminal history records of individuals seeking to serve as  
11 employees or volunteers of contracted providers or  
12 subcontractors in positions that place them in close proximity  
13 to youth when providing services on behalf of the office.

14 (b) Except as otherwise specified, any individual who is  
15 employed, seeks employment, or volunteers with a contracted  
16 provider or subcontractor in a position that necessitates close  
17 proximity to youth when providing services on behalf of the  
18 office shall:

19 (1) Submit to the office a sworn statement indicating  
20 whether the individual has ever been convicted of an  
21 offense for which incarceration is a sentencing  
22 option;





1           (2) Be subject to criminal history record checks through  
2           the Hawaii criminal justice data center, a consumer  
3           credit reporting agency, or a consumer reporting  
4           agency in accordance with section 846-2.7. An annual  
5           name inquiry shall be conducted in the state criminal  
6           history record files; and

7           (3) Provide to the office written consent for the office  
8           or its designee to obtain criminal history record  
9           information for verification.

10 Information obtained pursuant to this section shall be used  
11 exclusively by the office for purposes of determining whether a  
12 person is suitable for working or volunteering in a position  
13 that necessitates close proximity to youth when providing  
14 contracted services on behalf of the office or in conjunction  
15 with services provided for youth at the Hawaii youth  
16 correctional facility, while in custody, on furlough or on  
17 parole. All such decisions shall be subject to any applicable  
18 federal laws and regulations."

19           SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21           "(b) Criminal history record checks may be conducted by:



- 1 (1) The department of health on operators of adult foster  
2 homes or developmental disabilities domiciliary homes  
3 and their employees, as provided by section 333F-22;
- 4 (2) The department of health on prospective employees,  
5 persons seeking to serve as providers, or  
6 subcontractors in positions that place them in direct  
7 contact with clients when providing non-witnessed  
8 direct mental health services as provided by section  
9 321-171.5;
- 10 (3) The department of health on all applicants for  
11 licensure for, operators for, and prospective  
12 employees, and volunteers at one or more of the  
13 following: skilled nursing facility, intermediate  
14 care facility, adult residential care home, expanded  
15 adult residential care home, assisted living facility,  
16 home health agency, hospice, adult day health center,  
17 special treatment facility, therapeutic living  
18 program, intermediate care facility for the mentally  
19 retarded, hospital, rural health center and  
20 rehabilitation agency, and, in the case of any of the  
21 above-related facilities operating in a private



- 1 residence, on any adult living in the facility other  
2 than the client as provided by section 321-15.2;
- 3 (4) The department of education on employees, prospective  
4 employees, and teacher trainees in any public school  
5 in positions that necessitate close proximity to  
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees  
8 who may be in positions that place them in close  
9 proximity to children in recreation or child care  
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor  
12 licenses as provided by section 281-53.5;
- 13 (7) The department of human services on operators and  
14 employees of child caring institutions, child placing  
15 organizations, and foster boarding homes as provided  
16 by section 346-17;
- 17 (8) The department of human services on prospective  
18 adoptive parents as established under section 346-  
19 19.7;
- 20 (9) The department of human services on applicants to  
21 operate child care facilities, prospective employees  
22 of the applicant, and new employees of the provider



1 after registration or licensure as provided by section  
2 346-154;

3 (10) The department of human services on persons exempt  
4 pursuant to section 346-152 to be eligible to provide  
5 child care and receive child care subsidies as  
6 provided by section 346-152.5;

7 (11) The department of human services on operators and  
8 employees of home and community-based case management  
9 agencies and operators and other adults, except for  
10 adults in care, residing in foster family homes as  
11 provided by section 346-335;

12 (12) The department of human services on staff members of  
13 the Hawaii youth correctional facility as provided by  
14 section 352-5.5;

15 (13) The department of human services on employees,  
16 prospective employees, and volunteers of contracted  
17 providers and subcontractors in positions that place  
18 them in close proximity to youth when providing  
19 services on behalf of the office or the Hawaii youth  
20 correctional facility as provided in section 352D-4.3;

21 (14) The judiciary on employees and applicants at detention  
22 and shelter facilities as provided by section 571-34;



- 1           (15) The department of public safety on employees and  
2           prospective employees who are directly involved with  
3           the treatment and care of persons committed to a  
4           correctional facility or who possess police powers  
5           including the power of arrest as provided by section  
6           353C-5;
- 7           (16) The department of commerce and consumer affairs on  
8           applicants for private detective or private guard  
9           licensure as provided by section 463-9;
- 10          (17) Private schools and designated organizations on  
11          employees and prospective employees who may be in  
12          positions that necessitate close proximity to  
13          children; provided that private schools and designated  
14          organizations receive only indications of the states  
15          from which the national criminal history record  
16          information was provided as provided by section 302C-  
17          1;
- 18          (18) The public library system on employees and prospective  
19          employees whose positions place them in close  
20          proximity to children as provided by section 302A-  
21          601.5;



- 1           (19) The State or any of its branches, political  
2                   subdivisions, or agencies on applicants and employees  
3                   holding a position that has the same type of contact  
4                   with children, dependent adults, or persons committed  
5                   to a correctional facility as other public employees  
6                   who hold positions that are authorized by law to  
7                   require criminal history record checks as a condition  
8                   of employment as provided by section 78-2.7;
- 9           (20) The department of human services on licensed adult day  
10                   care center operators, employees, new employees,  
11                   subcontracted service providers and their employees,  
12                   and adult volunteers as provided by section 346-97;
- 13           (21) The department of human services on purchase of  
14                   service contracted and subcontracted service providers  
15                   and their employees serving clients of the adult and  
16                   community care services branch, as provided by section  
17                   346-97;
- 18           (22) The department of human services on foster grandparent  
19                   program, retired and senior volunteer program, senior  
20                   companion program, and respite companion program  
21                   participants as provided by section 346-97;



1       (23) The department of human services on contracted and  
2           subcontracted service providers and their current and  
3           prospective employees that provide home and community-  
4           based services under Section 1915(c) of the Social  
5           Security Act (42 [~~U.S.C. §~~] United States Code Section  
6           1396n(c)), as provided by section 346-97; and

7       (24) Any other organization, entity, or the State, its  
8           branches, political subdivisions, or agencies as may  
9           be authorized by state law."

10       SECTION 8. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12       SECTION 9. This Act shall take effect upon its approval.



**Report Title:**

Criminal History Background Checks; Social Services Programs

**Description:**

Authorizes the Department of Human Services or its designee to conduct criminal history record checks for those providing services to vulnerable adults and children. (HB3129 HD1)

